

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
AUG 23 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advisory Council on Historic Preservation)
DOCKET FILE COPY ORIGINAL)
Petition for Reconsideration Regarding Historic)
Preservation Concerns Relating to)
Communications Transmission Facilities)
Located at Lookout Mountain, Colorado)
Docket No. 99-267

To: The Commission

COMMENTS OF BELL SOUTH

BellSouth Corporation ("BellSouth"), on behalf of its wireless affiliates and subsidiaries, by its attorneys, hereby submits these comments in response to the Commission's *Public Notice*, DA 99-1211, "FCC to Seek Comments on a Letter from the Advisory Council on Historic Preservation Relating to Communications Transmission Facilities Located at Lookout Mountain, CO" (released June 25, 1999) ("*Public Notice*").¹ For the reasons stated herein, the Commission should deny the Advisory Council for Historic Preservation ("ACHP") Petition for Reconsideration ("Petition").²

¹ The June 25, 1999, *Public Notice* is a corrected version of a Public Notice released on June 23, 1999, by the FCC's Office of Engineering & Technology. Also, on July 22, 1999, the Commission granted a request for extension of time to file comments on or before August 23, 1999. See *Public Notice*, DA 99-1435, "FCC to Grant Extension of Time to File Comments on a Letter from the Advisory Council on Historic Preservation Relating to Communications Transmission Facilities at Lookout Mountain, CO" (released July 22, 1999).

² According to the *Public Notice*, the Commission is treating a two-page letter from ACHP dated June 3, 1999, as a Petition for Reconsideration.

No. of Copies rec'd 014
List ABCDE

DISCUSSION

In its Petition, ACHP asks the Commission to review its recent decision denying an Application for Review (“Application”) filed by the Canyon Area Residents for the Environment (“CARE”).³ ACHP requests that the Commission permit interested parties to comment on the potential effect to historic properties of a transmission tower and maintenance facility to be built by Lake Cedar Group (“LCG”) on Lookout Mountain near Denver, Colorado.⁴ Although ACHP filed its petition to ensure that historic resources are considered in the Commission’s proceedings relating to the Lookout Mountain facility, BellSouth maintains that the Commission has already determined that the facility would not adversely affect any of the nearby historic sites identified by CARE. Since all requisite parties have been afforded an opportunity to comment and the facility has been fully processed under the FCC’s environmental rules, BellSouth supports the Commission’s decision in the *CARE MO&O* and opposes any further environmental analysis of the historic issues raised in ACHP’s Petition.

For twenty-five years, the FCC’s environmental rules have exempted facilities located in “antenna farms” from formal reporting and environmental processing requirements. Subject to limits on excessive radiofrequency radiation, the construction of additional towers in established antenna farms where similar antenna towers are clustered is categorically excluded from FCC environmental

³ See *Canyon Area Residents for the Environment Request for Review of Action Taken Under Delegated Authority on a Petition for an Environmental Impact Statement, Memorandum Opinion and Order*, FCC 99-123 (May 27, 1999) [hereinafter *CARE MO&O*].

⁴ Petition at 1.

processing pursuant to Section 1.1306 of the Commission's rules.⁵ The longstanding rationale underlying the antenna farm exemption is based on the FCC's judgment that there is no significant environmental impact associated with the addition of similar facilities within an existing antenna farm.⁶ Consistent with this rationale, the Commission has generally encouraged FCC licensees to construct new facilities in antenna farms in order to preserve existing conditions and reduce the overall number of locations where antenna towers exist.⁷

To overcome this long-held exemption for facilities proposed to be located in antenna farms, past Commission decisions require that an interested party make a substantial showing under Section 1.1307(c) of the Commission's rules that the facility "may significantly affect the environment."⁸ CARE has failed to meet this burden. It has not presented any qualitative evidence as to how the Lookout Mountain tower may have the potential to affect nearby historic properties. Other than

⁵ See 47 C.F.R. § 1.1306 n.3; see also 47 C.F.R. § 1.1305(b)(1) (1976).

⁶ See *Implementation of the National Environmental Policy Act of 1969*, Docket No. 19555, *Memorandum Opinion and Order*, 56 F.C.C.2d 635, para. 5 (1975) ("The distinction we are marking . . . relates to the *likelihood* of [minor facilities] having significant effect."). In the 1979 to 1986 rulemaking where the Commission conformed its rules to the terminology and structure of new guidelines issued by the Council on Environmental Quality, the Commission characterized antenna farm facilities as among the class of minor actions that was "extremely unlikely" to impact the environment and would therefore be "categorically exclu[ded]." See *Amendment of Environmental Rules in Response to New Rules Issued by the Council on Environmental Quality*, GEN Docket No. 79-163, *Notice of Proposed Rulemaking*, FCC 79-388, app. (June 29, 1979).

⁷ See *CARE MO&O* para. 25; *First Century Broadcasting, Inc., Memorandum Opinion and Order*, 100 F.C.C.2d 761, para. 14-16 (1985); *Implementation of the National Environmental Policy Act of 1969*, Docket No. 19555, *Report and Order*, 49 F.C.C.2d 1313, para. 14 (1974); cf. *id.* para. 17 ("[U]se of existing routes is environmentally preferable to construction of a new route."); 47 C.F.R. § 1.1306 n.1 ("The use of existing buildings, towers, or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.").

⁸ See, e.g., *Twenver, Inc., Memorandum Opinion and Order*, 3 F.C.C.R. 5907, para. 3, 5-7 (1988); *First Century*, 100 F.C.C.2d para. 2, 16.

stating that the existing Lookout Mountain antenna farm is situated some distance from properties listed in the National Register of Historic Places,⁹ CARE provides no information as to how the addition of LCG's individual tower in the Lookout Mountain antenna farm will affect these historic properties. (In fact, consistent with prior decisions, the Commission concluded that the construction of the Lookout Mountain tower will decrease the number of towers in the antenna farm, thereby minimizing the impact of the antenna farm itself.¹⁰)

Finally, ACHP's *two-page* Petition is inadequate to overcome the Lookout Mountain facility's categorical exclusion from environmental processing. The Commission has already considered ACHP's concerns in its underlying decision to deny CARE's Application.

CONCLUSION

For the foregoing reasons, the Commission should stand by its quarter-century long rule and exclude facilities located in antenna farms from FCC environmental processing. Any departure from this precedent will discourage FCC licensees from selecting environmentally preferable locations within antenna farms because such siting decisions would be subject to attack by unsubstantial third-party showings. At a minimum, should the Commission decide to revisit historic preservation issues addressed by ACHP, BellSouth urges the Commission to distinguish this case as a rare departure for the thousands of authorized facilities relying on the Commission's environmental rule exemption

⁹ See Application at 10 (describing the National Register properties as within "hundreds of meters from the towers").

¹⁰ See *CARE MO&O* para. 26; see also *Twenver*, 3 F.C.C.R. para. 7 (finding that asserted environmental concerns were groundless since a proposed tower would have beneficial effects by reducing the number of existing towers).

for antenna farms. The Commission should clearly indicate the reasons for entertaining ACHP's Petition and specify the factors that must be present before future petitions will be entertained.

Respectfully submitted,

BELLSOUTH CORPORATION

By: C. Claiborne Barksdale
C. Claiborne Barksdale
1100 Peachtree Street, NE, Suite 910
Atlanta, GA 30309-4599
(404) 249-0917

By: William B. Barfield
Jim O. Llewellyn
William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-3610
(404) 249-4445

By: David G. Frolio
David G. Frolio
1133 21st Street, NW, Suite 900
Washington, DC 20036
(202) 463-4182

Its Attorneys

Date: August 23, 1999